

## Remarks

This is responsive to the Office Action mailed on August 15, 2006 in which the Examiner objected to the specification and drawings, rejected claims 10, 11, 26, 27 and 45 under 35 U.S.C. §112, rejected claims 1-5, 7 and 12-14 under 35 U.S.C. §102 as being anticipated by Glaesener (US 3,963,218), rejected claims 42, 44, 46-48 and 50 under 35 U.S.C. §102 as being anticipated by Riley (US 4,543,012), rejected claims 43-50 under 35 U.S.C. §102 as being anticipated by Davis et al (US 6,669,402) and rejected claims 47, 48 and 50 under 35 U.S.C. §103(a) as being obvious over Sessions (US 4,043,131) in view of Riley. Claims 15, 19-24 and 28 were allowed, and claim 8 was objected to as being dependent upon a rejected base claim.

In response, applicants have canceled claims 45 and 47-50, and amended claims 10, 26 and 43 as noted above. Each of the Examiner's objections and rejections of claims is discussed separately below.

## Objection to Drawings and Specification

Enclosed are drawing sheets depicting Figs. 3, 16, 17 and 20. Fig. 3 has been amended as shown in red pen to delete reference number 82 and replace it with reference number 74, consistent with the other Figs. Figs. 16, 17 and 20 have been amended as shown in red to delete reference number 230 and 230', and replace them with the reference number 231. The specification has been amended at page 30, line 23 to delete the reference number 230 and replace it with 231. It is submitted that these amendments overcome the Examiner's objections to the specification and drawings.

## Rejection of Claims under §112

Claim 10 has been amended to depend from claim 8, and claim 26 has been amended to depend from claim 23. Claim 45 has been canceled.

With respect to the rejection of claims 11 and 27, the Examiner's attention is drawn to Fig. 22 and the discussion in the specification at page 32, line 14 to page 33, line 4. The all-threaded rod 334 is connected to a nut 336, which, as noted in the specification and shown in Fig. 22, is connected to the channel 316 or reinforcing member as claimed in claims 11 and 27. The rejection of claims 11 and 27 should be withdrawn.

**Rejection of Claims 1-5, 7 and 12-14 over Glaesener**

The Examiner rejected claims 1-5, 7 and 12-14 as being anticipated by Glaesener. It is settled that in order to find anticipation, the Examiner must demonstrate that all elements of the claimed invention are identically set forth in a single reference. Further, the preamble of a claim cannot be ignored, particularly where it relates directly to language in the body of the claim.

With respect to claims 1-5, independent claim 1 calls for a "floating barrier unit" in the preamble, and the last paragraph of that claim recites a ballast weight which is effective to maintain the outer portion of the mounting post "out of the water when said housing is placed in the water." Glaesener discloses a vehicle roadway guardrail (Col. 1, line 10-15) having a core formed of steel plate, sheet or strip encased in foam to protect against corrosion. There is absolutely no teaching or suggestion of a "floating" barrier unit in Glaesener, or that the Glaesener guard rail may be used in the water or even whether it will float.

Additionally, Glaesener fails to disclose or suggest a ballast weight which is effective to maintain the outer portion of the mounting post out of the water when said housing is placed in the water. The Examiner argues that the lower portion of steel strap 23 which holds the plates 16 and 17 together, or any of the lower parts of foam 21, 52 or 53, comprise a "ballast weight." Even assuming, *arguendo*, that the vehicle roadway guardrail of Glaesener may float, none of these elements comprise a ballast weight, which, as called for in claim 1, must be effective to maintain the

outer portion of the mounting post out of the water. In each embodiment of Glaesener the steel plates are symmetrical, and the straps 23 shown in Fig. 1 are likewise symmetrical. None of these elements would tend to place the vehicle roadway guardrail in a particular orientation when in the water. On the contrary, in the event the vehicle roadway guardrail of Glaesener was placed in the water, it would no doubt roll over under the weight of the post 11 (characterized as the mounting post by the Examiner) and block 12 of concrete (characterized as the accessory item by the Examiner) so that the post 11 and block 12 are under the water and not out of it. Claim 1 is clearly not anticipated by Glaesener.

Claims 2-5 are allowable for the same reasons as claim 1. Further, claim 2 recites that the floating barrier unit is formed in the “shape” of a “highway barrier.” The term “highway barrier” is clearly defined in the specification as having the shape shown in the Figs. Glaesener has a distinctly different shape.

Claim 7 is allowable for the same reasons as claim 1. Additionally, claim 7 calls for both a ballast weight and a connector secured at a first end to the mounting post and at a second end to the ballast weight. The Examiner argues that the forked end 14 of post 11 comprises a “connector” secured to the mounting post and to the ballast weight. As discussed at Col. 2, lines 38-40 of Glaesener, the forked end 14 of post 11 passes through a hole 19 in plate 17 and then engages the sides of plate 16. These plates 16, 17 are characterized by the Examiner as the reinforcing member as that term is used in claim 1. The ballast weight, on the other hand, is characterized by the Examiner as parts of 21, 23, 52 or 53. The “connector” of Glaesener is therefore secured to the mounting post 11 and to the reinforcing member 16, not to the ballast weight 21, 23, 52 or 53 as argued by the Examiner.

Dependent claims 12-14 are considered allowable for the same reasons as claim 7. Further,

as to claim 12, there is no teaching in Glaesener of the ballast weight formed of a layer of concrete located with the hollow interior of the housing.

#### **Rejection of Claims 43, 44, 46-48 and 50**

Claims 43, 44, 46-48 and 50 were rejected under 35 U.S.C. §102 as being anticipated by Riley. The Examiner maintains that Riley teaches a body of foam material 17 located within the hollow interior, which he argues meets the recitation in the second paragraph of claim 43. It is then argued that any portion of such body of foam material 17 comprises the “ballast weight” recited in the last paragraph of claim 43. The body of foam material 17 is either one element of claim 43 or the other. It is not segmented or divided into multiple parts so as to perform different functions, as seen in Fig. 2 of Riley, and therefore cannot be relied on by the Examiner as disclosing both of the claimed elements of a body of foam material and a ballast weight.

Notwithstanding the Examiner’s incorrect position, applicants have amended claim 43 to stress that the ballast weight is connected to the housing and has a discrete volume which is separate from said body of foam material. This language clearly distinguishes claim 43 from Riley.

Claims 44 and 46 are allowable for the same reasons as claim 43. Claims 47-50 have been canceled and the Examiner’s rejection is therefore moot.

#### **Rejection of Claims 43-50**

Claims 43-50 were rejected under 35 U.S.C. §102 as being anticipated by Davis et al. The rejection under Davis et al fails for the same reason as Riley discussed above. The “body of foam material” in Davis et al is described in that patent as ballast material which may be inserted within the hollow interior of the barrier housing. See Col. 5, lines 50-63. The Examiner maintains that a portion of such foam material comprises a ballast weight, as called for in claim 43. The foam within the interior of the Davis et al structure cannot be read on both the body of foam material and

ballast weight elements of claim 43. Further, there is no ballast weight in Davis et al which occupies a discrete volume separate from that of the foam body, as called for in amended claim 43.

Claims 44 and 46 are allowable for the same reasons as claim 43. Further, claim 44 calls for the cable to be embedded in the body of foam material. Contrary to the Examiner's assertion, the cables of Davis et al are received within holes 50, 52 formed in the side wall of the barrier, and do not extend into the interior of the barrier. See Fig. 7b. The rejection of canceled claims 45 and 47-50 is considered moot.

In view of the amendments to the specification, the submission of proposed amended drawings, the cancellation of claims 45 and 47-50, the amendment of claims 10, 26 and 43, and the argument given above, applicants consider this case to be in a condition for allowance and respectfully request early notification of same.

Respectfully submitted,

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